***THE HONOURABLE SRI JUSTICE B.PRAKASH RAO**

+ Writ Petition No.16051 of 2004

% Dated: 16-11-2004

Between:

#Madhucon –Sinohydro Joint Venture,

Madhucon House, 1129/A, Road No.36,

Hitec City Road, Jubilee Hills, Hyderabad,

Represented by the Vice President Madhucon Projects

Ltd., Dr.No.Janakiram, S/o N.V.Suryanarayana Murthy,

Resident of Hyderabad.

… Petitioner

and

$ 1.The Government of Andhra Pradesh, Rep. by the

Principal Secretary to Government, Irrigation and

C.A.D. (PPMU) Department, Secretariat,Hyderabad.

2. The Engineer-in-Chief (Irrigation), Government of

Andhra Pradesh, Errummanzil, Hyderabad.

… Respondents

! Counsel for petitioners: Mr. T.Jagadish

^ Counsel for respondents: G.P. for irrigation & Command Area Development

< GIST:

>HEAD NOTE:

?Cases referred:

1.1995 (1) SCC 478

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 16051 of 2004

Between:

Madhucon-Sinohydro Joint Venture, Madhucon House, 1129/A, Road No.36, Hitec City Road, Jubilee Hills, Hyderabad. Rep. by the Vice President Madhucon Projects Limited,
Dr. N. Janakiram, S/o. N.V. Suryanarayana Murthy, R/o. Hyderabad.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep. by the Principal Secretary to Government, Irrigation and C.A.D. (PPMU) Department, Secretariat, Hyderabad.

2 Engineer-in-Chief (Irrigation), Government of Andhra Pradesh, Errummanzil, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, in the nature of a Writ of Mandamus or any other appropriate Writ, direction or order declaring the action of the 2nd respondent in not recommending the petitioner joint venture for empanelment and the 1st respondent in not empanelling the petitioner joint venture in G.O.Ms. No. 971, Irrigation & CAD (PPMU) Department, dated 13/08/2004 for participation in the procurement of priority irrigation projects under EPC (Turnkey) contract system pursuant to the Tender Notice No.1, dated 27/06/2004 of the Engineer-in-Chief (Irrigation), Errummanzil, Hyderabad, as illegal and void and direct the 1st repsondent to consider the case of the petitioner joint venutre for empanelment.

Counsel for the Petitioner:MR.T.JAGDISH

Counsel for the Respondent No.: GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following:

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

–

W.P.No.16051 of 2004

ORDER:

The petitioner herein, a Joint Venture Contractor filed this writ petition *inter alia* seeking a Writ of Mandamus declaring the action of the second respondent in not recommending it for empanelment and consequently not empanelling by the first respondent in G.O.Ms.No.971, Irrigation & CAD (PPMU) Department, dated 13.08.2004 for participation amongst the contractors so selected in the procurement of the priority irrigation project under EPC (Turnkey) contract system, in pursuance of the Tender Notice No.1, Dated 27.06.2004 issued by the second respondent herein and for further directions to consider the petitioner's case for such empanelment.

The petitioner claims in the affidavit given by its Vice President, supporting the writ petition that it is a Special Class Contractor registered with the Government of Andhra Pradesh and had executed various works like Highways, Flyovers, Bridges, Irrigation Dams, and Canals etc. It had entered into a joint venture agreement dated 10.07.2004 with Sinohydro Corporation, a company owned by the

State of the Government of People's Republic of China which itself has a greater expertise and experience in construction works especially the Hydroelectric Projects, Dams, River Valley Projects, Irrigation Projects, Water Supply Projects etc., and had been executing all such works all over the world, having been listed in the top 225 Global Contractors, since the year 1999 with a turnover reaching to above Rs.9900 crore of rupees in the year 2003.

The case of the petitioner is that in terms of the aforesaid Tender Notice, dated 27.06.2004 issued by the second respondent inviting offers for pre-qualification tenders for Water Resources Development Projects in Andhra Pradesh, it has obtained pre-qualification documents which contains several conditions and accordingly it had submitted the pre-qualification bid within the time and followed by a written representation on 22.07.2004 made to the second respondent herein pointing out an anomaly in regard to the requirement of special class registration with the Government of Andhra Pradesh by a foreign joint venture partner and therefore requesting that such condition can be complied at a later stage and thus to consider its case. After receipt of the tenders and on the recommendations from the second respondent, ultimately the Government has finally empanelled nine contractors in the impugned proceedings in G.O.Rt.No.971, dated 13.08.2004. However, the petitioner's name is not found its place amongst the selected contractors. Therefore, the petitioner had filed a detailed representation once again on 18.08.2004 to both the respondents herein for considering its case for empanelment on the ground that it has got all the qualifications and it would also augment healthy competition and provide the best quality of work. Thus aggrieved against such non-inclusion of the petitioner's joint venture, this writ petition is filed inter alia contending that in spite of compliance of all conditions as per the pre-qualified tenders, the petitioner's case has not been properly considered.

Further in regard to the joint venture, and in spite of the principles by the Supreme Court in **New Horizons Limited and another Vs. Union of India and others ,** the respondents had not given a due and proper consideration to clauses (v) and (vi) of para-h of the tender notice, apart from not keeping in view properly the clauses (ii), (iii) and (iv) also. It is submitted that the compliance of the qualification by one partner is enough to claim the consideration. Therefore, the insistence on the part of the respondents herein for literal compliance of requirement of clauses (v) and (vi) by both the partners in a joint venture is totally illegal and arbitrary. It was further contended that 7 out of 9 empanelled firms do not satisfy clauses (v) and (vi). Further in respect of the petitioner, though it had A.P Special Class Registration, but in regard to the ISO certificate, the same is in the process and it would take about six to eight months, whereas the other partner of the joint venture namely Sinohydro has the ISO certification but not the A.P. registration. Therefore, the non-consideration of the petitioner's case is totally arbitrary and illegal. Hence, the writ petition.

In the counter affidavit filed on behalf of the respondents herein, which is sworn to by the second respondent herein, it is stated that in response to the notice No.1, dated 27.06.2004, no doubt the petitioner has submitted its bid on 12.07.2004 within the time. In all, there were 24 bidders and the same were opened at 4.00 PM on the same day i.e., 12.07.2004 and the names of the bidders were read out informing that after technical evaluation of various bids, the empanelment would be informed to the qualified bidders. On examination and technical evaluation of all the bids, it is found that it had satisfied the conditions in para 1 (h), (i), (ii), (iv), (vii) and (viii). However it was pointed that the petitioner did not satisfy the conditions in para 1 (h) (iii), (v) and (vi). As per clause 1 (h) of the General Conditions one partner of the joint venture should meet the similar work criteria as prescribed in para 1 (c), which contemplate that the bidder should have satisfactorily completed not less than 90% of contract value as a prime contractor of at least one similar work of magnitude not less than Rs.100 crores in the block period preceding five financial years. The

nature of similar works has been categorized under clause 1 (d) to mean the works of Dams/Barrage/Canal System including CM & CD works and Hydraulic Tunnels/Lift Irrigation Canal Schemes/Hydro Electric Projects. Therefore, the nature of the works executed by Madhucon do not comply the requirement of not less than Rs.100 crores as specified under Clause 1 (c). Further the works executed by the other partner namely Sinohydro, in fact relate to water supply projects, which do not fall within the prescribed category under Clause 1 (d). Hence, both the partners did not satisfy Clause 1 (h) (iii) and therefore they are not qualified for the pre-qualification bid. It was also pointed out that as required under Clause 1 (h) (v), the ISO certificate was produced from Sinohydro, but no such certificate was produced by Madhucon nor there is any material showing that it has applied for the same. Similarly, as required under Clause 1 (h) (vi), both the partners of the joint venture did not produce registration with the Government of Andhra Pradesh nor placed any material to show that they have applied for the same. Therefore, the petitioner totally stands disqualified. There is no relaxation done by the respondents in regard to the conditions as stipulated in para 1 (h) (v) and (vi), but it is only cases where the bidders who have produced the ISO certificate or registration or at least placed the material to show that they have applied for the same, the said bids were taken into consideration. Whereas in the present case, the petitioner did not produce at least any material to the effect that they have applied for registration or ISO certificate, insofar as Sinohydro is considered, the petitioner had not satisfied the conditions in Clause 1 (h) (iii), and therefore the bid was not taken into consideration. It was also pointed out that the petitioner cannot place himself on par with the other bidders who have been empanelled in the impugned proceedings. It was further pointed out that as per the details furnished by the petitioner, Maducon Project had executed works only to the extent of Rs.22.6 crores as against the specified Rs.100 crores. The other partner Sinohydro Corporation did not file any statement of similar works and the works shown are only that of water supply projects, water system, pumping stations

which cannot be equated to the work under consideration. Having thus not satisfied the conditions of pre-qualification bids, the petitioner cannot make any claim. The petitioner did not challenge the empanelment as such done in the impugned proceedings but seeks only inclusion.

Having regard to the aforesaid reasons, the question of consideration of any representation filed by the petitioner on 18.08.2004 does not arise. Due to the petitioner's non-satisfaction as to the

pre-qualified terms and conditions, and the

non-production of ISO certificate or any material in this regard, the petitioner is not entitled for consideration. The registration of the Madhucon Project Limited, dated 17.07.2004 with the State of Andhra Pradesh was produced only in this court i.e. much later to opening of the bid documents. Therefore, there is no satisfaction in regard to the qualifications on the part of the petitioner and thus the writ petition is liable to be rejected.

Initially, Sri E.Manohar, the learned Senior counsel appearing on behalf of the petitioner by taking this Court through the entire material submitted that having regard to the particulars furnished in regard to the similar nature of works, as shown, there is a full satisfaction of the requirement and further the application of the petitioner being pending with the Government itself for the purpose of registration and also in regard to the ISO certificate, the petitioner could not have been discriminated against. Whereas, in the similar circumstances, the persons whose applications for registration and ISO certificate were still pending were empanelled in the impugned proceedings and therefore, the entire impugned action is wholly unsustainable and illegal. Further it is pointed out that once the petitioner fully gets

qualified, the non-consideration thereof he would be in the teeth of the norms in the decisions making process and as such liable to be set aside.

The learned advocate General appearing on behalf of the respondents herein by taking through the entire terms and conditions and the tender document filed on behalf of the respondents submitted that there is a substantial variation in regard to the contents of the original tender filed by the petitioner and the copies of which are included in the material papers filed in support of the writ petition. In regard to the works mentioned at item nos.9, 10 and 11 as shown in the tender format, which is made part of the material in this writ petition is not found place amongst the works shown by the petitioner in the original tender as filed them nor there is any material or mention in regard to the pendency of any applications by the petitioner for the purpose of registration. Therefore, the petitioner cannot be equated with that of the others who have been empanelled though whose applications have been pending, but the said fact was mentioned in the tender format.

After hearing the counsel at length, and having regard to the serious dispute raised by the respondents in regard to the correctness and authenticity of the tender documents as filed by the petitioner, this Court permitted both sides to have an inspection of the records.

Subsequent to the inspection, the matter was again taken up and on behalf of the petitioner a reply affidavit was filed by the sworn deponent one Sri M.Chandra Sekhar, Deputy General Manager (Tenders) to the effect that in fact the respondents did not properly understand the nature of similar works executed by the Sinohydro Corporation and whereas the said work do fall well within the requirement and thus cannot be rejected. It was submitted that the petitioner had produced ISO certificate

and in regard to the registration with the A.P. Government, the same is being renewed from time to time and at the relevant point of time the Madhucon had submitted a renewal application and the same is in the process. Subsequently, as per the proceedings, dated 17.07.2004, the said registration certificate was issued. It was submitted that along with the tender document, the petitioner submitted acknowledgment of the renewal application though the same was not filed along with the material papers in this court.

It was further submitted that if one of the constituent is registered, it would suffice the requirement. Therefore, the petitioner had fulfilled all the requirements as a joint venture and the respondent ought not to have denied the empanelment, which is in violation of Article 14 of the Constitution of India. It was further stated in the reply affidavit that the required document is not filed is not correct. More so, with the experience at its hand, such blunders could not have been committed. It was further submitted that during the course of verification, he found that the entire set of papers pertaining to registration of Madhucon Hydro Limited, could not be seen. Continuing further, it was submitted that the ground on which the petitioner's tender is sought to be rejected is more trivial and is in respect of a nonessential condition, more so when similar such similar condition has been relaxed in favour of others which itself would amply establish that such a condition is not mandatory nor essential.

Continuing further arguments on behalf of the petitioner, Sri T.Jagadish, the learned counsel appearing on behalf of the petitioner submit that the action on the part of the respondents herein is wholly unsustainable and they have not kept the nine distinctions between the essential and nonessential condition. The objections as now raised in regard to the registration etc., are only nonessential, more so, when it was relaxed in favour of others who have been empanelled in the impugned proceedings, it would show that the same is not mandatory and could not have been used against the petitioner which is only arbitrary.

The learned Advocate General once again taking through the entire papers submitted that having not fully qualified nor disclosing of the facts including as to the nature of works and the registration, the petitioner cannot claim any indulgence from this court, more so, when such sweeping allegations are sought to be made against the respondents. Further, it was pointed out that in regard to the pre-qualified tenders, there is no question of any such scuttle distinction between the essential and nonessential and it does not exist.

Considering the submissions made and on perusal of the material, the question which falls for consideration is as to whether the respondents are justified in their action for not empanelling the petitioner in the impugned proceedings and further whether any distinction can be drawn in between essential and nonessential condition in a pre-qualified bid.

There is no dispute to the basic facts that the respondents herein have issued the tender notice on 27.06.2004 inviting offers for prequalification bids for Water Resources Development Projects in Andhra Pradesh and the petitioner is one of such bidders. It is relevant to take note of the conditions contained therein, which reads as follows:

> "1.0 The notice is issued to apply for consideration to be included in the panel of agencies to be short listed and prescribe the following qualification criteria.
>
> a. The bidder/firm/company registered with Government of Andhra Pradesh with valid registrations under special class, civil in terms of the following G.Os. are only eligible for participation i.e.,
>
> i. G.O.Ms.No.521, I&CAD, Special Class
>
> dt.10/12/1984 with

ii.	G.O.Ms.No.178,I&CAD, dt 27/9/1997 in	specialization
iii.	G.O.Ms.No.132, I&CAD, dt.11/8/1998 and dt.1/7/2004	1. Earth work and canal linking 2. Construction of bridges and other structures
iv.	G.O.Ms.No.94, I&CAD, Special class Civil works	

b. Annual Turn over: The bidder/firm/company on his name should have achieved in at least two financial years a minimum annual financial turn over in all class of civil Engineering Works of value not less than Rs.400 crores in block period of preceding five financial years.

c. The bidder/firm/company should have satisfactorily completed not less than 90% of contract value as a prime contractor or at least one similar work of magnitude not less than Rs.100 crores in the block period preceding five financial years.

d. Similar works are the works of Dams/Barriage/Canal System including CM & CD works & hydraulic tunnels/Lift Irrigation Canal Schemes/Hydro Electric Projects.

e. The bidder/firm/company must have a net worth of Rs.1000 crore.

f. The bidder/firm/company must have been making a net profit before tax for the last three years.

g. The bidder/firm/company must have ISO certification.

h. In case if the application is from a joint venture shall not be more than three

i. No. of partners in the Joint Venture shall not be more than three.

ii. One partner of the Joint Venture should meet the requirement as prescribed at para 1(b) and all partners should meet 25% of the annual turn over as prescribed at para 1 (b) individually.

iii. One partner of Joint Venture should meet similar work criteria as prescribed at para 1 (c).

iv. One partner of Joint Venture should meet net worth criteria as prescribed at para 1 (e) and the other partners should meet at least 25% of the net worth as prescribed at para 1 (e) individually.

v. All partners of Joint Venture should meet ISO certificate as prescribed in para 1 (g).

vi. All the Joint Venture partners should have registered with Government of Andhra Pradesh with valid registration under special class, Civil terms of the aforesaid GOs and are only eligible for participation.

viii. The joint venture partner of one bidder/firm/company shall not enter into joint venture partnership with another bidder/firm/company for the empanelment.

vii. All the joint venture partners should meet the criteria as prescribed at para 1 (f) individually."

The case of the petitioner in brief is that in terms of the bid as made by him,

he is fully qualified and therefore his non-inclusion is wholly illegal. Further, it is the case of the petitioner that other partner of the joint venture holds the ISO certificate which is filed at page 228 of the material papers. Though the main partner of Madhucon had applied for, however, the same is yet to be given. Even in regard to the registration with the State Government is concerned, the Madhucons application for renewal of the existing registration which is still pending, and therefore, the petitioner is entitled to be considered. It is the further case that the bidders who in similar circumstances having applied and whose registration is yet to be granted have been considered, whereas the petitioner is being discriminated against.

From the tender as stated to have been submitted by the petitioner herein, it is seen that the nature of works as shown there reads as follows:

FORM-4							
WORKS OF SIMILAR NATURE EXECUTED OVER THE LAST FIVE YEARS							
Sl.No.	Project Name	Name of the Employer	Description of Work	Cont-ract No.	Value of Contract (US $ million	Date of issue of work order	Actual date of Completion
1.	Phase II Water supply project from Zhuhai to Macao	Head quarter of Zhuhai Water supply Project	The project involved engineering, procurement, construction, supply, erection, testing and commissioning of pipeline and associated civil works, pump house, Water Treatment Plant, mechanical, electrical, instrumentation and control equipment.	-	60.51	June,1994	July, 1997
2.	Transmission and distribution pipe work of distribution pipe work of Hui'an Chenganan Water Treatment Plant	Hui'an Chengnan Water Treatment Plant	The project involved engineering, procurement, construction, supply, erection, testing and commissioning of pipeline and associated civil works, pump house, Water Treatment Plant, mechanical, electrical, instrumentation and control equipment.	-	40.32	September, 1997	October, 1999

3.	4th Dhaka Water Supply Project	Dhaka Water supply and Sewerage Authority	Water supply project consists large dia of pipeline vary from 1.8 Mtr. To 0.6 Mtr. Total length of pipeline was 38 Kms.	-	12.7	19.11.1999	04.04.2002
4.	**Grade One Pumping Station of Sanmenxia Huaiba Water Supply Project**	**Construction Management Bureau of Sanmenxia Huaiba Water Supply Project**	The project involved engineering, procurement, construction, supply, erection, testing and commissioning of pump station and all associated civil work, mechanical, electrical, instrumentation and control equipment.	-	42.5	October 15, 1996	October 11, 1999
5.	No.1,2 and 3 Pumping Station of Queshan Reservoir	Jinan Waterworks Company	The project consisted 6 axial pumps with design flfow rate of 12.5 cum/sec, diverting water from Yellow River to desanding channel, and then transmit to Pumping Station No.2 by culverts. The project also consisted 5 axial pumps with design flfow rate of 12.1 cum/sec, diverting water from desanding channel to Pumping Station No.3	-	32.9	March 20, 1999	April 18, 2000

6.	Southern Main Cannel Stage I pumping Station for Wanjiazhai Yellow River Diversion Project	Wanjiazhai Project Construction Management bureau	The project is mainly composed of 8 sets of water pumps (flow rate 6.45 cum/sec each0, 4 storage ponds of 120,000 cum each, a substation of 1000,000 KVA and rira; rpad of 27 Km. The total concrete quantity is 75,000 cum., the quantity of fabrication and installation of metal structure is 880 MT.	-	28.5	May 15, 1998	May 15, 2001
7.	**Xiamen Sewage Treatment Plant Project**	**Xiamen Sewage Treatment Plant Construction Management Unit**	Project consists of earth and rock excavation of 155000 Cum. With structural steel of 5000T and the capacity of Treatment Plant of 300000T per day.	-	**9.6**	**March 12, 1994**	**July 1, 1996**
8.	Kunming No.4B Sewage Treatment Works	Kunming Sewage Treatment Project Management Unit	Project consists of earth and rock excavation of 200000 Cum. With structural steel of 7000T and the capacity of Treatment Plant of 350000 T per day.	-	15	May 1999	June 2001

9.	Finance Design, Construction, Supply, Installation and Commissioning for Taleghan Dam & HPP Project	Tehran Regional Water Board	It was a Hydroelectric project mainly consist of following items:Power station installed capacity: underground powerhouse, 63KV substation, and all other auxiliaries : 2x8.9MW,High earth rock-fill dam:101m (height)Earth and rock excavation: 5000000m3Dam fill : 16000000m3Power intake water diversion tunnel : 750m long x 8m dia**Overflow channel**Earth and rock excavation: 2000000m3Design flow : 2500m3/s	-	143	March 2002	March 2006
10.	Tekeze Hydropower Project – Lots 1B/2/3	Ethiopian Electric Power Corporation	It is a EPC contract involving following works:	-	224	June 2002	July 2007
			One double-arch	180m high			
			Concrete dam				
			Underground power house	90x20x40m			
			Rock excavation	230000m3			
			Concrete				
11.	Bakun Hydroelectric Project - Package CW2 – Main Civil Works	SARAWAK HIDRO SDN BHD	It is a EPC contract involving following works:	-	470	November 2002	October 2007

High concrete-faced rock-fill dam, dam embankment	205m	-	-	-	-
Power house, power intake, power tunnel and other structures	Completed				
Permanent road to the dam	Completed				

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Whereas, as per the original tender filed by the petitioner, as produced in the Court, the same reads as follows:

FORM-4							
WORKS OF SIMILAR NATURE EXECUTED OVER THE LAST FIVE YEARS							
Sl.No.	Project Name	Name of the Employer	Description of Work	Cont-ract No.	Value of Contract (US $ million	Date of issue of work order	Actual date of Completion

1.	Phase II Water supply project from Zhuhai to Macao	Head quarter of Zhuhai Water supply Project	The project involved engineering, procurement, construction, supply, erection, testing and commissioning of pipeline and associated civil works, pump house, Water Treatment Plant, mechanical, electrical, instrumentation and control equipment.	-	60.51	June,1994	July, 1997
2.	Transmission and distribution pipe work of distribution pipe work of Hui'an Chenganan Water Treatment Plant	Hui'an Chengnan Water Treatment Plant	The project involved engineering, procurement, construction, supply, erection, testing and commissioning of pipeline and associated civil works, pump house, Water Treatment Plant, mechanical, electrical, instrumentation and control equipment.	-	40.32	September, 1997	October, 1999
3.	4th Dhaka Water Supply Project	Dhaka Water supply and Sewerage Authority	Water supply project consists large dia of pipeline vary from 1.8 Mtr. To 0.6 Mtr. Total length of pipeline was 38 Kms.	-	12.7	19.11.1999	04.04.2002
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5.	No.1,2 and 3 Pumping Station of Queshan Reservoir	Jinan Waterworks Company	The project consisted 6 axial pumps with design flfow rate of 12.5 cum/sec, diverting water from Yellow River to desanding channel, and then transmit to Pumping Station No.2 by culverts. The project also consisted 5 axial pumps with design flfow rate of 12.1 cum/sec, diverting water from desanding channel to Pumping Station No.3	-	32.9	March 20, 1999	April 18, 2000

6.	Southern Main Cannel Stage I pumping Station for Wanjiazhai Yellow River Diversion Project	Wanjiazhai Project Construction Management bureau	The project is mainly composed of 8 sets of water pumps (flow rate 6.45 cum/sec each0, 4 storage ponds of 120,000 cum each, a substation of 1000,000 KVA and rira; rpad of 27 Km. The total concrete quantity is 75,000 cum., the quantity of fabrication and installation of metal structure is 880 MT.	-	28.5	May 15, 1998	May 15, 2001
7.	**Xiamen Sewage Treatment Plant Project**	**Xiamen Sewage Treatment Plant Construction Management Unit**	Project consists of earth and rock excavation of 155000 Cum. With structural steel of 5000T and the capacity of Treatment Plant of 300000T per day.	-	**9.6**	**March 12, 1994**	**July 1, 1996**
8.	Kunming No.4B Sewage Treatment Works	Kunming Sewage Treatment Project Management Unit	Project consists of earth and rock excavation of 200000 Cum. With structural steel of 7000T and the capacity of Treatment Plant of 350000 T per day.	-	15	May 1999	June 2001

Surprisingly, the works shown at items 9, 10 and 11 as shown from the material papers and as extracted above and as sought to be relied on by the petitioner are not found place amongst the works shown in Form 4 to the bid. In fact, it has been contended seriously on behalf of the petitioner that while taking into account the entire works shown at columns 1 to 11 the petitioner sufficiently satisfied the requirement. However, if the works namely as shown at serial No.9, 10 and 11 are to be excluded, there is no dispute that the petitioner would not satisfy the required turnout as per the condition. Even in the reply affidavit filed by the petitioners, there is no explanation for such absence of the columns in regard to the work shown at items No.9, 10 and 11 in the format of the bid submitted by the petitioner himself in the form 4 thereon. In fact, the Form 4 in the bid ends with the items shown at 1 to 8 only, whereas the form 4 as sought to be relied on and as filed in the material papers goes beyond 8 and extends up to serial no.11.There is absolutely no explanation forthcoming on behalf of the petitioner herein for such conspicuous absence of these items shown at item Nos.9, 10 and 11 nor there is

any denial to that effect. Even after the inspection made in this court, it is not the case that the said tender is not the original, as filed by the petitioner. Even a bare look at the Form 4 in the original tender as produced by the respondents, it ends with the columns up to 8 only in the page, whereas the columns as sought to be relied on by the petitioner in Form 4 format filed in the material papers, the column 8 ends in middle of the page and on the same page the other two items shown at serial Nos.9 and 10 and it extends to other page with the item at 11. Therefore, it cannot be said as submitted on behalf of the petitioner that there is any replacement of the papers filed by them. Having regard to the entries as can be found, such allegation is totally unfounded and unsustained. Further the petitioner has totally failed to make out that the copies of the bid containing the aforesaid item Nos.9 to 11, which are made part of the material papers filed in support of the writ petition, are the genuine and correct one. In the absence of any such material forthcoming, there is no reason to cast any doubt on the part of the respondents herein or even in regard to the tender bid of the petitioner as produced before this Court. In regard to the pendency of the application filed by the petitioner herein for renewal and for grant of necessary certificates, it is not the case of the petitioner that there is any disclosure to the said fact in the bid format as submitted by them. Except stating that, on similar such circumstances where applications are pending, the respondents have considered the case and empanelled them in the impugned proceedings, no material is produced on behalf of the petitioner to show that there is any such disclosure in the bid format as submitted by him. As it is the registration of the petitioner has expired, and therefore, there is nothing on record to indicate that the application filed by the petitioner is pending consideration with the respondents. In the absence of any such material forthcoming, it is not open for the petitioner to place any reliance on such mere pendency of the application. Thus, the petitioner has approached this Court with incorrect facts and material, which not only amount to act of suppression but also that of misleading. Hence, no indulgence can be sought for invoking extraordinary

jurisdiction under Article 226 of the Constitution of India.

It is now well established that in regard to the pre-qualified tenders, the conditions contemplated are mandatory and any noncompliance thereof would not entitle to any bidder to make claim for the work. Further the distinction as sought to be pointed out on behalf of the petitioner by putting certain conditions as essential and other conditions as nonessential cannot have application in respect of pre-qualified tenders. The whole object of putting conditions is only to see that there is strict adherence. No material is placed to support the contention. In the circumstances, it has to be held that the distinction of making essential and nonessential conditions as applicable to the ordinary and normal tenders have no application to the pre-qualified tenders.

Having regard to the aforesaid reasons, it has to be held that the petitioner has hopelessly failed satisfy the required conditions under the
pre-qualified tenders and he cannot claim any right to be considered along with or on par with those who have been already empanelled. Hence, I do not find any merits in the writ petition.

The writ petition is accordingly dismissed. No order as to costs.

_____

(B.PRAKASH RAO, J)

Date: 16-11-2004.

Ycr/mrb

Note:

L.R. copy to be marked.

To

1 The Principal Secretary to Government, Government of Andhra Pradesh, Irrigation and C.A.D.(PPMU) Department, Secretariat, Hyderabad.

2 The Engineer-in-Chief (Irrigation), Government of Andhra Pradesh, Errummanzil, Hyderabad.

3. 2 CCs to G.P. for Irrigation and Command Area Development, High court Buildings, Hyderabad. (OUT)

4. One Fair copy to the Honourable Sri Justice B.PRAKASH RAO. (For his lordships kind perusal)

5. 8 L.R. copies.

6. The Secretary, Union of India, Ministry of Law, Justice and Company affairs, New Delhi.

7. The Secretary, A.P. Advocates' Association, Library, High Court Buildings, Hyderabad.

8. two C.D. copies.